

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Level 3 Communications LLC's Petition for)	WC Docket No. 03-266
Forbearance Under 47 U.S.C. § 160(c) and)	
Section 1.53 of the Commission's Rules from)	
Enforcement of Section 251(g), Rule)	
51.701(b)(1), and Rule 69.5(b))	

**JOINT COMMENTS OF THE UNITED STATES DEPARTMENT OF JUSTICE,
THE FEDERAL BUREAU OF INVESTIGATION, AND
THE UNITED STATES DRUG ENFORCEMENT ADMINISTRATION**

The United States Department of Justice ("USDOJ"), the Federal Bureau of Investigation ("FBI"), and the Drug Enforcement Administration ("DEA") (collectively, "Law Enforcement") hereby submit joint comments in response to the Public Notice, DA 04-1,¹ arising from Level 3 Communications LLC's ("Level 3") Petition for Forbearance.² In its petition, Level 3 requests that the Commission use its forbearance authority under Section 10 of the Communications Act of 1934, as amended,³ ("Communications Act") to relieve providers of voice services transmitted using the

¹ *Pleading Cycle Established for Petition of Level 3 for Forbearance from Assessment of Access Charges on Voice-Embedded IP Communications*, Public Notice, DA 04-1, WC Docket No. 03-266 (rel. Jan. 2, 2004).

² In the Matter of Level 3 Communications LLC Petition for Forbearance Under 47 U.S.C. § 160(c) from Enforcement of 47 U.S.C. § 251(g), Rule 51.701(b)(1), and Rule 69.5(b), WC Docket No. 03-266 (filed Dec. 23, 2003) (hereinafter "Level 3 Petition").

³ 47 U.S.C. § 160.

Internet Protocol ("IP") of the burden of having to pay interstate and intrastate switched access charges in connection with those services.

Law Enforcement expresses no opinion on the Commission's access-charge regime or the appropriateness of forbearance in this instance. Those are clearly matters that the Commission is well-positioned to resolve. Indeed, several proceedings are pending before the Commission that will enable it to determine the appropriate regulatory framework to apply to providers of voice-over-IP ("VoIP") services.⁴ Any such determinations must, however, ensure that the Communications Assistance for Law Enforcement Act ("CALEA")⁵ continues to be applicable to such services.

⁴ See, e.g., *Pleading Cycle Established for Comments on Vonage Petition for Declaratory Ruling*, Public Notice, DA 03-2952, 2003 WL 22227682 (2003); *In the Matter of Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers; Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services; 1998 Biennial Regulatory Review – Review of Computer III and ONA Safeguards and Requirements*, Notice of Proposed Rulemaking, 17 FCC Rcd 3019 (2002) ("Wireline Broadband NPRM"); *In the Matter of Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities; Internet Over Cable Declaratory Ruling; Appropriate Regulatory Treatment for Broadband Access to the Internet Over Cable Facilities*, Declaratory Ruling and Notice of Proposed Rulemaking, 17 FCC Rcd 4798 (2002) ("Cable Modem Declaratory Ruling and NPRM"); *Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, 16 FCC Rcd 9610 (2001); *Wireline Competition Bureau Seeks Comment on AT&T's Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services Are Exempt from Access Charges*, Public Notice, 17 FCC Rcd 23,556 (2002); *Pleading Cycle Established for Comments on Petition of SBC Communications Inc. for Forbearance Under Section 10 of the Communications Act from Application of Title II Common Carrier Regulation to "IP Platform Services,"* Public Notice, DA 04-360, 2004 WL 253297 (2004).

⁵ 47 U.S.C. §§ 1001 *et seq.*

It is unquestioned that CALEA applies to any entity providing traditional narrowband telephony services. Moreover, the Commission has held that “CALEA, like the Communications Act, is technology neutral. Thus, a carrier’s choice of technology when offering common carrier services does not change its obligations under CALEA.”⁶ It follows that any entity providing broadband telephony services, including IP telephony, Internet telephony, VoIP services, voice-embedded IP communications, and telephony using any technology not yet invented, is and should be classified as a telecommunications carrier subject to CALEA; and such services are not and should not be classified as “information services.” A failure to recognize that broadband telephony service providers are included within CALEA’s definition of “telecommunications carrier”⁷ would pose a serious risk that certain call content and call-identifying information would evade lawful electronic surveillance, thereby undercutting CALEA’s purpose and jeopardizing the ability of federal, state, and local governments to protect public safety and national security against domestic and foreign threats. CALEA applies to all telecommunications carriers, and contains no exemption for telecommunications carriers that provide their services in any other manner, including through broadband Internet access. This must be made clear, for it is

⁶ *Communications Assistance for Law Enforcement Act*, Second Report and Order, 15 FCC Rcd 7105, 7120 n.69 (1999).

⁷ *See* 47 U.S.C. § 1001(8) (defining “telecommunications carrier” for purposes of CALEA).

expected that broadband telephony services will likely displace traditional circuit-mode telecommunications as the most common form of telephony.

Law Enforcement concurs with Level 3 that “the Commission must distinguish those rules that, in a competitively neutral and technologically appropriate manner, support important social goals such as public safety, law enforcement, access for persons with disabilities and universal service, from legacy economic regulations that are unnecessary to restrain market power.”⁸ Law Enforcement further agrees with Level 3 that the Commission’s forbearance authority is one of multiple appropriate regulatory tools that the Commission can use to reduce the regulatory burdens it determines to be unnecessary. The Commission has ample authority to forbear from, waive, or modify its rules, and to forbear from applying provisions of the Communications Act to telecommunications carriers. Law Enforcement supports the exercise of such authority to relieve telecommunications carriers, including providers of broadband telephony, of regulatory burdens imposed under the Communications Act when appropriate.

Conclusion

Although Law Enforcement expresses no opinion regarding the merits of Level 3’s petition, Law Enforcement urges the Commission not to make any pronouncement that would put CALEA’s applicability to broadband telephony services into question,

⁸ Level 3 Petition at iii.

including any statement that Level 3's "voice-embedded IP communications" are "information services" under the Communications Act.

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Respectfully submitted,
THE FEDERAL BUREAU OF INVESTIGATION

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